

SANDEEP KUMAR SHARMA @ LADDI v. CHANDER KANT,(2022-1)205 PLR 439

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice G.S. Sandhawalia.

SANDEEP KUMAR SHARMA @ LADDI – Petitioner,

Versus

CHANDER KANT and others – Respondents.

C.R. No. 2208 of 2021

Civil Procedure Code, 1908 (V of 1908) Order 6, Rule 17 - In the written statement filed, it was admitted that the defendant-petitioner is a tenant in the shop - By virtue of the amendment, a somersault is sought to be taken that the petitioner is a co-sharer and the plaintiff can only go in for partition - The admission, as such, which was made regarding the relationship was, thus, sought to be withdrawn by way of proposed amendment and a totally new and inconsistent case is sought to be set up and would cause serious prejudice to the plaintiffs and alter the character of action - Even otherwise even under Section 116 of the Indian Evidence Act, 1872 the petitioner is estopped in raising the challenge to the title of the landlord and has to surrender possession before that can be done - Evidence Act, 1872 (1 of 1872) Section 116 - East Punjab Urban Rent Restriction Act, 1949 (III of 1949) Section 13.

Cases referred to:-

1. (2013-3)171 PLR 650 (SC), *S. Malla Reddy v. M/s. Future Builders Co-operative Housing Society*.
2. 2012 PLRonline 0104, *State of Andhra Pradesh v. D. Raghukul Pershad (D) by L.Rs.*

Mr. Vishal Munjal, for the petitioner. (through VC)

G.S.Sandhawalia, J. (Oral) - (4th October, 2021) - The present revision petition is directed against the impugned order dated 05.03.2020 (Annexure P-6) whereby, the application for amendment of the written statement has been dismissed by the Rent Controller, Pathankot. The reasoning given in the said order is that the application had been filed at a belated stage after the commencement of the trial and after the evidence has been led by the plaintiff. It was observed that a new plea was being sought to be introduced which was not part of the original written statement and no such plea of co-sharer was raised on an earlier occasion. The relationship had been admitted and during the cross examination also, no

such plea was raised. The amendment would, thus, introduce a new plea and would result in re-trial of the case and there was nothing to show from the revenue record also that the applicant was a cosharer. Counsel has submitted that on account of change of counsel, as such, the necessity arose after seeking better legal advice.

2. The said argument is not liable to be accepted. The ejectment was sought from the shop in question on the ground that there was a rent note inter se the parties and the [tenancy](#) had been terminated on account of the fact that the property was required for need of the children for establishing business in the shop in question.

3. In the written statement filed, it was admitted that the defendant-petitioner is a tenant in the shop at a monthly rent of Rs.3,000/- since the last more than 14 years, the property having been taken on rent from Madan Lal Azad, who was the predecessor-in-interest of the plaintiffs. By virtue of the amendment, a somersault is sought to be taken that the petitioner is a co-sharer and the plaintiff can only go in for partition. The admission, as such, which was made regarding the relationship was, thus, sought to be withdrawn by way of proposed amendment and a totally new and inconsistent case is sought to be set up and would cause serious prejudice to the plaintiffs and alter the character of action. In *S. Malla Reddy v. M/s. Future Builders Co-operative Housing Society and others*, ¹ (2013-3)171 PLR 650 (SC), 2013 AIR SC (Civil) 1420, it was held that the parties cannot be allowed to resile from the admission made in the written statement. It was noticed that on an earlier occasion, recourse to Order 8 Rule 9 and Order 6 Rule 16 [CPC](#) had been resorted to before the application under Order 6 Rule 17 CPC had been filed. Witnesses had already been examined and, therefore, the finding recorded by the High Court that it was an abuse of process of Court was upheld. Relevant portion of the said judgment reads thus:-

“24. Although the defendant-appellants filed the petition for striking out their own pleading i.e. written statement, labelling the petition as under Order VI Rule 16 CPC, but in substance the application was dealt with as if under Order VI Rule 17 CPC inasmuch as the trial court discussed the facts of the case and did not permit the defendants to substitute the written statement whereunder there was an admission of the suit claim of the plaintiff-Society. The relevant portion of the order quoted hereinabove reveals that the trial court while rejecting the aforementioned petition held that the defendant-appellants cannot be allowed to substitute their earlier written statement filed in the suit whereunder there was an admission of the claim of the plaintiff-Society (respondent herein). Similarly in the revision filed by the defendants, the High Court considered all the decisions referred by the defendants on the issue as to whether the defendants can withdraw the admission made in the written statement and finally came to the conclusion that the defendant- appellants cannot be allowed to resile from the admission made in the written statement by taking recourse to Order VIII Rule 9 or Order VI Rule 16 CPC by seeking to file a fresh written statement. In the aforesaid premises, filing of a fresh petition by the defendants under Order VI Rule 17 CPC after about 13 years when the hearing of the suit had already commenced and some of the witnesses were examined, is wholly misconceived. The High Court in the impugned order has rightly held that filing of subsequent application for the same relief is an abuse of the process of the court. As noticed above, the relief sought for by the defendants in a subsequent petition under Order VI Rule 17 CPC was elaborately

dealt with on the two earlier petitions filed by the defendant-appellants under Order VI Rule 16 and Order VIII Rule 9 CPC and, therefore, the subsequent petition filed by the defendants labelling the petition under Order VI Rule 17 CPC is wholly misconceived and was not entertainable.”

4. Even otherwise, under Order 6 Rule 17 CPC, the alteration or amendment of the pleadings are to be on such terms as may be just and such amendments are to be allowed which are to be necessary for the purpose of determining the real questions of controversy between the parties.

5. The petitioner having admitted the relationship inter se the parties now cannot wriggle his way out of the said fact by way of the proposed amendment which would alter the case totally and require re-trial. Even otherwise even under Section 116 of the Indian Evidence Act, 1872 the petitioner is estopped in raising the challenge to the title of the landlord and has to surrender possession before that can be done and reliance can be placed upon the judgment of the Apex Court in *State of Andhra Pradesh v. D. Raghukul Pershad (D) by L.Rs.*, ² 2012 PLRonline 0104, 2012 (8) SCC 584. Similarly, under the proviso under Order 6 Rule 17, no application is to be allowed after the trial has commenced until the Court comes to the conclusion that in spite of due diligence, the parties could not have raised the issue before the commencement of the trial and no such case for exception is made out.

6. Resultantly, finding no merit in the petition, the same is dismissed in limine.

R.M.S.

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Petition dismissed.